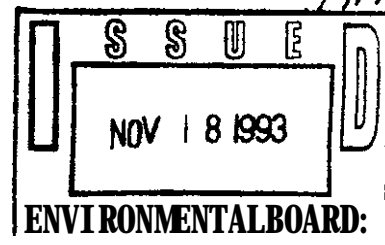


VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. Chapter 151



Re: Salvas Paving, Inc. and  
Jerome and Joan Salvas  
Application #5L1149-EB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This decision pertains to an appeal of a permit issued for an existing construction, excavation, and paving company located in the Town of Stowe. As is explained below, the Environmental Board concludes that the application complies with 10 V.S.A. § 6086(a)(8) (Criterion 8 - aesthetics) and (10) (Criterion 10 - conformance with town plan).

I. SUMMARY OF PROCEEDINGS

On June 20, 1991, the Environmental Board issued Declaratory Ruling #229, finding that an Act 250 permit was and is required for the project at issue in this appeal. The declaratory ruling was not appealed to the Vermont Supreme Court.

On November 15, 1991, Salvas Paving, Inc. and Jerome and Joan Salvas (the Applicants) filed an application for an Act 250 permit with the District #5 Environmental Commission.

On August, 5, 1992, the District Commission issued Land Use Permit #5L1149 (the Permit), authorizing the construction and use of an office, vehicle storage and maintenance and material storage and processing areas for an existing construction, excavation, and paving company located at the intersection of Moscow Road and Vermont Route 100. The project is on a tract of land within the Town of Stowe consisting of 37.5 acres.

On August 21, 1992, the Applicants filed a motion to alter with the District Commission pursuant to Rule 31(A).

On September 4, 1992, the Town of Stowe Planning Commission (the Planning Commission) filed an appeal of the Permit. On September 23, the Boards Associate General Counsel Aaron Adler sent the Planning Commission a letter stating, among other things, that the Board would not act on the appeal until the District Commission acted on the Applicants' motion to alter. No objection was filed to this letter.

On September 30, 1992, the District Commission issued a memorandum of decision on the motion to alter, granting and denying the motion in part. Along with this decision, the District Commission issued Land Use Permit #5L1149

(Docket #559)

(Reconsidered), amending various portions of the Permit. None of the amendments to the Permit affects the matters raised by the Planning Commission in its appeal.

On November 2, 1992, Board Chair Elizabeth Courtney held a prehearing conference with the Applicant and the Planning Commission participating. On November 10, the Chair issued a prehearing conference report and order.

During December 1992 and early January 1993, the parties filed legal memoranda concerning a motion to dismiss Criterion 8 from the appeal filed by the Applicant. On January 20, 1993, the Board issued a memorandum of decision denying that motion. The January 20 decision is incorporated by reference.

Also during December 1992, and January and early February 1993, parties filed prefiled and rebuttal testimony and written evidentiary objections. On February 10, 1993 the Board convened a hearing in the Town of Stowe, with the following parties participating:

The Applicants by Gerald R. Tarrant, Esq.  
The Town of Stowe Planning Commission by Steven F. Stitzel, Esq.

After taking a site visit and hearing testimony, the Board recessed the matter pending filing of proposed findings of fact and conclusions of law, review of the record, deliberation, and decision.

On March 3, 1993, the Applicants and the **Planning** Commission filed proposed findings of fact and conclusions of law. On March 10, the Applicants filed a copy of a superior court decision, Town of Stowe v. Jerome Salvas, Joan Salvas, and Salvas Paving Inc., No. S0184-90LaC (March 1, 1993). In that decision, the Court found that portions of the project at issue constituted **pre-existing** uses that were not in violation of the local zoning ordinance. The Court **also** found that other portions of the project did not constitute **pre-existing** uses and that those other portions were in violation of that ordinance. The Court enjoined the Applicants' use of the latter portions of the project.

On March 10, 1993, the Board deliberated and decided to request the parties to provide comment on the impact, if any, of the Court's decision on the proceedings before the Board. On March 29, the Board through counsel issued a memorandum requesting such comment. The Planning Commission and the Applicants filed responses on April 14 and 15 respectively.

The Board deliberated further on June 16, 1993. On July 26, the Board issued a memorandum asking the parties specific questions concerning the status of the Applicants' compliance with the town zoning ordinance and what action the Board should take concerning this matter.

On August 19, 1993, the **Planning** Commission filed a response, stating that the Applicants had obtained **local** zoning approvals, delineating alterations the Applicants had made in order to obtain those approvals, and requesting that the Board issue a decision on the proposed project as altered by the Applicants to obtain the approvals. The Planning Commission's August 19 submission attached various exhibits.

On September 20, 1993, the Board issued a memorandum, stating that parties would be provided an opportunity to object to the statements in the Planning Commission's memorandum and to the exhibits attached thereto. No objections were filed.

The Board deliberated again concerning this matter on October 7 and November 11, 1993. On November 11, following a review of the evidence and arguments presented in the case, the Board declared the record complete and adjourned the hearing. This matter is now ready for decision. To the extent any proposed findings of fact and conclusions of law are included below, they are granted; otherwise, they are denied.

## II. ISSUES

a. Whether, pursuant to Criterion 8, the Applicants' project, as altered to obtain town approvals, will have an undue adverse effect on aesthetics or scenic or natural beauty.

b. Whether, pursuant to Criterion 10, the Applicants' project, as altered to obtain town approvals, will conform to the Town of Stowe's municipal plan.'

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*'Criterion 10 also requires conformance with the applicable regional plan The Board does not address this issue because the District Commission found the project to be in conformance with the regional plan and no party raised the issue before the Board.*

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### III. FINDINGS OF FACT

1. Salvas Paving, Inc. is an existing paving, construction, and excavation business located on both sides of Route 100 near its intersection with Moscow Road in Stowe. The business is located on a tract of land consisting of approximately 37.5 acres owned by Jerome and Joan Salvas. (As used below, the term Applicants refers to the **Salvases** and Salvas Paving Inc.)
2. The **Salvases** acquired the tract in 1971, at which time it was part of a larger tract. At the time of purchase, the tract included a residential house on the west side of Route 100 and a large barn on the east side of Route 100. Immediately following purchase, the **Salvases** began conducting a construction and excavation business on the tract.
3. Approximately 18 acres of the tract are located on the west side of Route 100 (the West Side). Approximately 19 acres of the tract are located on the east side of Route 100 (the East Side).
4. Since 1971, the Applicants have made, in connection with the business, improvements to the East Side, among which are the following:
  - a. Additions to, and interior and exterior renovation of, the existing barn, which now houses their business office.
  - b. Construction of a second barn, which is used to house a horse and store hay, and to store equipment used in connection with the business.
  - c. Construction of a pond just north of the barns, near Route 100, to be used for fire protection of the structures on the tract. The pond is approximately one-eighth of an acre in size. The Applicants have planted trees in, and landscaped, the area near the pond.
  - d. Creation of large stockpiles of gravel, stone, and sand behind the pond, away from Route 100.
  - e. Creation of a large sand stockpile located near the barn that houses the business office.

- f. Creation of parking areas with a total of 60 available parking spaces. Many of these parking spaces are used either for “overflow” parking or for equipment storage.
    - g. Creation of a materials storage area located approximately 500 feet away from Route 100.
    - h. Relocation of a stream that crosses the East Side, and installation of a culvert in the relocated stream to allow people to cross the stream.
  - 5. Since 1971, the Applicants have made, in connection with the business, improvements to the West Side, among which are the following:
    - a. Placement of fill in an area near Route 100
    - b. Installation of a gas pump and creation of five parking spaces within the area in which fill was placed. The gas pump is used for refueling vehicles used as part of the business.
    - c. Creation of a storage area for piles of rock near Route 100, at least part of which is within the area in which fill was placed.
    - d. Creation of a storage area for piles of topsoil behind the gas pump, away from Route 100.
    - e. Creation of a work yard located behind the topsoil storage area, away from Route 100. The work yard contains a storage area for processed topsoil.
    - f. Creation of a second area for storing piles of rock, located at the far western end of the West Side, away from Route 100. The storage area is located near a Class II wetland under the Vermont Wetland Rules. Once depleted, the rock pile will not be restocked within 50 feet of the wetland.
  - 6. The improvements on the East Side associated with the business are located within an approximately 3.7 acre area on that side. The improvements on the West Side associated with the business are located within an ‘approximately 3.1 acre area on that side.
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7. The portion of the East Side not used in connection with the business has a primarily rural and pastoral appearance. On the eastern end of the portion used in connection with the business, the tract slopes upward, and is used as a pasture for horses.
8. The portion of the West Side not used in connection with the business has a rural and pastoral appearance. Also, the Salvases' residence is located on the portion of the West Side not used in connection with the business. Behind the residence, the West Side rises up in several large knolls and then slopes downward to the Little River.
9. There are four vehicular entrances on the Salvases' tract that are devoted to the business. Two of these entrances lead into the East Side from Route 100. The third entrance leads into the West Side from the Moscow Road. The fourth entrance is on the northeast corner of the West Side, running from Route 100 in toward the fuel pump.
10. The business presently employs approximately 12 people<sup>2</sup> and owns approximately seven trucks, a bucket loader, an excavator, and various other smaller equipment. The vehicles and equipment are stored on-site.
11. Significant portions of the business, on both the West and East Sides, are visible to drivers traveling on Route 100 and the Moscow Road.
12. Route 100 is an important scenic corridor. In the area of Route 100 near the business, Route 100 provides views of the Green Mountains to the west, including Mt. Mansfield. The improvements associated with the business do not impede these views.
13. The area in which the business is located is primarily rural and residential in nature. The area also contains several commercial uses which are some distance away from, and visually less prominent than, the business.

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<sup>2</sup>The citation of the number of employees is in no way intended as a limit on how many people the Applicants may employ.

14. On the East Side, the improvements associated with the business that are closest to Route 100 consist of the barn that houses the business office and the pond. 'The barn's appearance to the driver passing by remains that of a barn.
  15. On the West Side, the improvements closest to the road include the Salvases' residence and rock piles. The rock piles are screened from Route 100 by several white pines.
  16. The improvements associated with the business that are visible from Route 100 generally have a neat and well-kept appearance. The only portion of the business that does not have such an appearance is the materials storage area located 500 feet away from Route 100 on the East Side. This materials storage area is not visible from Route 100 because of topography and existing vegetation.
  17. For the East Side, the Applicants have included the following landscaping in their application for a land use permit:
    - a. In the area of the pond • five maples between the pond and Route 100; an existing 30-foot spruce located on the north end of the pond; 30 to 40 evergreen shrubs and ten white pines on the east end of the pond; four white pines on the south end of the pond; and preservation of an existing group of trees on the south end of the pond.
    - b. In the area of the barn and nearby sand pile - preservation of existing white pines that screen the sand pile; and maintenance of a lawn between the barn and Route 100.
    - c. Planting of approximately 40 white pine or spruce trees on the northern edge of that portion of the East Side devoted to the business.
    - d. Maintenance of all existing trees within that portion of the East Side devoted to the business.
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18. For the West Side, the Applicants have included the following landscaping in their application for a land use permit:
  - a. Planting a row of 15 trees along the Moscow Road edge of the tract to screen the rock, topsoil storage areas, and work yard described above.
  - b. Maintenance of all existing trees within that portion of the West Side devoted to the business.
19. Subsequent to the filing of this land use permit application, the Applicant altered their project in order to obtain local approvals. Those alterations include:
  - a. Creation of a two- to three- foot berm to shield the rock piles on the West Side near the intersection of Route 100 and the Moscow Road. The berm will be located behind the existing pines.
  - b. A westward extension of the proposed tree line along the Moscow Road to better screen topsoil operations from that road.
  - c. The size of the white pines to be planted on the east end of the pond on the East Side will be a minimum of six feet.
  - d. Two white pines and a white birch tree will be added on the northwest corner of the East Side near Route 100 to better shield the stockpiles on the East Side.
  - e. Any dead or dying trees will be replaced.
  - f. The size of the work yard on the West Side will be reduced by 50 percent.
20. The local plan for the Town of Stowe is called "Stowe - Now and in the Future, The Municipal Plan for the Town and Village." It was adopted in 1990. Chapter 10 of that plan is entitled "Land Use Plan." Under that plan, the area in which the business is located is designated rural-residential. The Land Use Plan states that the goals for rural-residential areas are:



1. To maintain the natural and scenic qualities that create and preserve the best possible environment for residential development.
  2. To promote the preservation of adequate open space through carefully planned cluster types of development.
  3. To encourage agricultural productivity of good farmlands and of forest resources.
  4. To permit the establishment of recreational and resort facilities when compatible with the primary purpose of a residential environment.
21. The Land Use Plan does not state that commercial developments are prohibited in rural-residential zones for aesthetic or any other reasons.
22. Chapter two of the local plan states that the objectives of the Stowe plan include: (a) careful “review [of] all development projects to ensure minimal negative impact on Stowe’s natural resources” and (b) maintenance of “the high quality rural/village character of Stowe, preserving the exceptional scenic beauty ... of the town while allowing for moderate growth.”
23. Chapter three of the local plan is entitled “Natural and Historic Resources.” This chapter identifies scenic resources as important natural resources and includes as scenic resources the “spectacular array of open space, including mountains, valleys, wooded hillsides, open meadows, cultivated fields, and grazing pasture lands [that] dominates the landscape.” The chapter also identifies scenic vistas from major highways as significantly affecting the visual quality of the town, and states that areas adjacent to major highways are visually significant because they serve as the foreground of views of distant ridges.

#### IV. CONCLUSIONS OF LAW

##### A. Criterion 8: Aesthetics and Scenic and Natural Beauty

10 V.S.A. § 6086(a)(8) requires that, prior to issuing a permit for the proposed project, the Board must find that the project “[w]ill not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics ....” The

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Board uses a two-part test to determine whether a project meets Criterion 8. First, it determines whether the project will have an adverse effect. Second, it determines whether the adverse effect, if any, is undue. Re: Ouechee Lakes Corp., Applications #3W0411-EB and #3W0439-EB, Findings of Fact, Conclusions of Law and Order at 18-19 (January 13, 1986).

With respect to the analysis of adverse effects on aesthetics and scenic beauty, the Board examines whether a proposed project will be in harmony with its surroundings or, in other words, whether it will “fit” the context within which it will be located. Id. at 18.

The context of the Applicants’ business is that it is located in a primarily rural and residential area. The area has some commercial uses but these are not visually as prominent as the Applicants’ project. Further, the reason for the prominence of the Applicants’ project is that it is located right on Route 100, a important scenic corridor, and that significant portions of the project are visible from Route 100. The Board concludes this commercial project, which includes large stockpiles of rocks, sand, and topsoil, which is visible from an important scenic corridor, and is located within an area that is primarily rural and residential, is out of context and has an adverse effect on aesthetics and scenic beauty.

The Board therefore evaluates whether such adverse effect is undue. In evaluating whether adverse effects on aesthetics and scenic beauty are undue, the Board analyzes three factors and concludes that a project is undue if it reaches a positive conclusion with respect to any one of these factors, which are:

- a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
- b. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
- c. Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the proposed project with its surroundings?

Id. at 19-20.

The Board begins with item c because in this case the mitigating steps the Applicants have taken and will take are pivotal to the Board's decision. These steps include the following:

- a. Maintaining the barn housing the business office, which is close to Route 100, as a rural structure.
- b. Preservation and maintenance of existing trees, and of a lawn between the barn and Route 100.
- c. Extensive additional landscaping and plantings to screen stockpiles from visibility from Route 100 and the Moscow Road.
- d. Placement of the materials storage area in an area not visible from Route 100.
- e. Creation of a pond near Route 100.
- f. Reduction of the size of the work yard on the West Side by 50 percent.
- g. Additional plantings and other revisions to the landscaping plans to conform with local approvals.

Based on the above, the Board concludes that the Applicants have taken generally available mitigating steps to improve the harmony of their project with their surroundings and that the steps the Applicants propose will substantially improve such harmony.

With the mitigating steps described above, the Board concludes that the Applicants' project will not be shocking or offensive.

With the mitigating steps described above, the Board concludes that the Applicants' project will conform to the aesthetic provisions of the Stowe Town Plan. In this respect, the Board concludes that the Town Plan contains provisions that constitute a written community standard regarding aesthetics and scenic beauty. See, e.g., Findings 20 through 23, above. The Board further concludes that the goal of the aesthetic provisions of the Town Plan is only to promote development within the Town that adequately preserves the Town's scenic beauty. For example, Chapter 2 of the plan seeks to preserve scenic beauty while allowing for moderate growth. The Board believes that, with the above-described

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mitigating steps, the goal of the plan's aesthetic provisions is met with respect to this project.

B. Criterion 10

The Board has concluded above that the Applicants' project meets the aesthetic provisions of the town plan.

The Board also concludes that the Applicants' project meets the plan generally. While the plan does state that the area in which the Applicants' project is located is a rural-residential area, the plan does not state that no commercial development may occur there. Rather, the plan evinces a goal that rural and residential uses are to be primary in that area and that other uses are to be compatible. With the mitigating steps described above, the Applicants' project will be **sufficiently** compatible with the rural and residential nature of the area to meet the goals of the plan.

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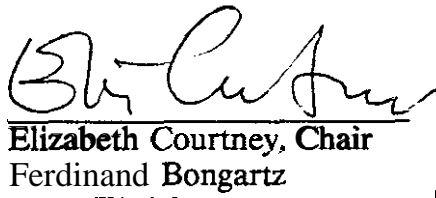
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V. ORDER

Land Use Permit Amendment #5L1149-EB is hereby issued. Jurisdiction is returned to the District #5 Environmental Commission.

Dated at Montpelier, Vermont this 18th day of November, 1993.

ENVIRONMENTAL BOARD



**Elizabeth Courtney, Chair**

Ferdinand Bongartz

Terry Ehrich

Lixi Forma

Arthur Gibb

Samuel Lloyd

Robert Opel\*

\*Alternate member Opel heard this case but did not participate in the deliberations on October 7 and November 11. He has reviewed this decision and agrees with it.

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